IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5246 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSRTC

Versus

BHIKHABHAI JOITABHAI PATEL

Appearance:

1. Special Civil Application No. 5246 of 1999

MRS VASAVDATTA BHATT for Petitioner No. 1

MR AS SUPEHIA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/05/2002

ORAL JUDGEMENT

Heard learned advocate Ms. Bhatt for the petitioner and Mr. A.S.Supehia for the respondent workman. By way of this petition, the petitioner corporation has challenged the award made by the tribunal

in Reference No. 370 1992 dated 17th June, 1998 wherein the tribunal has set aside the order of punishment of stoppage of three increments with cumulative effect and the corporation has been directed to pay all consequential benefits to the workman with an amount of Rs.1000/- towards costs of the reference. This petition was admitted by this court by issuing rule thereon and interim relief has been granted earlier has been confirmed by this court by order dated 2nd September, 1999.

Learned advocate Ms.Bhatt for the petitioner has submitted that the concerned workman has tampered with some blocks of tickets and CWA during his duty and on checking, irregularity was found and, therefore, the statements of the concerned workman and concerned persons were obtained and it was found that while the conductor was on duty on 22.6.1986, he had shown tickets in block of Rs.1.25 ps. amounting to Rs.1,180.15 and thereafter by eraser, it was shown as Rs.1,130.00 and as such, he had temporarily misappropriated an amount of Rs.50.00 and the report was filed in this respect and thereafter the conductor was charge sheeted and after holding legal and proper inquiry, order of punishment was passed which was challenged by the workman before the tribunal. She has submitted that in view of these facts, the tribunal has committed gross error in deciding the legality, validity and propriety of the departmental inquiry when there was no challenge made by the respondent workman. She has also submitted that the tribunal has erred in coming to the conclusion that the findings recorded by the competent authority are baseless and perverse.

On the other hand, learned advocate Mr. Supehia has submitted that no doubt, the respondent has not challenged the legality and validity of the departmental inquiry but the powers are with the tribunal to examine the legality and validity though it was admitted by the respondent and the tribunal was right in appreciating the evidence on record and has rightly come to the conclusion that the findings recorded by the authority are baseless and perverse and as a result thereof, the tribunal was also right in setting aside the order of punishment and, therefore, this Court should not interfere with such award made by the tribunal.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award made by the tribunal. Before the tribunal, the legality and validity of the departmental inquiry has not been challenged by the respondent. In this regard, the

tribunal has observed on page 6 of the award as under:

"At the outset, it is pertinent to note that though the legality and propriety of the enquiry is admitted, the record of enquiry shows serious irregularity in the procedure and process adopted by the corporation and in the interest of justice, this tribunal is competent and bound to take note of those facts attracting direct atention of this tribunal. "

Thereafter, the tribunal has come to the conclusion that according to the record, the report of the reporter was there and the reporter was examined and the statements of the witnesses who took part in the investigation were there and the statement of clerical staff were also there but not a single person was examined in enquiry. In view of these facts, it was observed by the tribunal that therefore, the effect of this would be that the facts of report was not produced by the reporter giving statement before the enquiry officer and, therefore, there was no question of corroborating his statement also and therefore naturally there was no evidence before enquiry officer as appears from the record and what enquiry officer did was that he took the statement of the delinquent conductor, that too by asking questions of cross examination. Thereafter, the tribunal has observed that if the findings of the enquiry officer are read, he has taken all these facts as duly proved by proper evidence and even he has taken support of the statement of the delinquent conductor also regarding tampering with the documents but in fact the concerned workman has denied this fact in his statement. After observing like this, the tribunal has further observed that the enquiry officer gave finding that as it is difficult to ascertain as to whether the delinquent conductor has tampered himself or not with CWA page 606982 only because Rs.50.00 was proved given more from the sale of tickets by the conductor and he must be punished. The tribunal has, in view of these facts, observed that this kind of findings can be held nothing but perverse and baseless as not based on evidence led before the enquiry officer and are perverse. Consequently, the tribunal set aside the order of punishment.

Upon perusal of the entire award made by the tribunal, according to my opinion, the tribunal has not committed any error apparent on the face of the record.

Ms. Bhatt has not been able to point out any

infirmity in the award made by the tribunal. She has also not been able to point out that the findings recorded by the tribunal are perverse or that the tribunal has committed any jurisdictional error and/or procedural irregularity. Therefore, no interference is required by this Court in exercise of the powers under Article 226/227 of the Constitution of India.

Accordingly, this petition is rejected. Rule is discharged. Interim relief granted earlier shall stand vacated. There shall be no order as to costs.

At this stage, learned advocate Mr. Supehia for the respondent has submitted that the respondent has already retired from service on 30th April, 1994 and, therefore, some suitable directions are required to be issued to the petitioner corporation to pay the difference of salary and other consequential benefits available to the respondent as per the award made by the labour court, within some reasonable period.

Considering the request made by Mr. Supehia, it is directed to the petitioner corporation to pay the necessary arrears and consequential benefits payable to the respondent workman as per the award made by the labour court within two months from the date of receipt of copy of this order and to fix the salary of the respondent and then to pay retirement benefits, if any, payable to the respondent in accordance with law, within three months from the date of receipt of copy of this order.

1.5.2002. (H.K. Rathod,J.)

Vyas